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09/808,524	03/14/2001	David Harold Berry	CSA 2 0114	4510	
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Timothy E. Nauman, Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP 1100 Superior Avenue, 7th Floor			EXAMINER		
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Cleveland, OH	44114-2518		ART UNIT	PAPER NUMBER	
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			DATE MAILED: 09/20/2002	DATE MAILED: 09/20/2002	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examin F			Application No.	Applicant(s)				
Filemming Saether 3879	. Office Action Summary		09/808,524	BERRY ET AL.				
The MAILING DATE of this communication appears on this cover shift with the correspondence address — Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Educations of time map by exhibited useful the provided of 3 CPR 1.13(b), in no event, however, may a reply be timely filed with the state of the map of the provided			Examin r	Art Unit				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION. - Edurations of times may be available under the provisions of 35° GR 1.55(s), in no event, horways, may a reply be timely filled - Edurations of times may be available under the provisions of 35° GR 1.55(s), in no event, horways, may a reply be timely filled - EMPORT of reply specified above, the maximum delatory pends will exply which the statutory minimum of thiny (20) days will be considered timely, - If NO period for reply is specified above, the maximum delatory pends will exply and wall expire 35° (8) MON This form the mailing faile of this communication, - If NO period for reply as specified above, the maximum delatory pends will exply and wall expire 35° (8) MON This form the mailing faile of this communication, and the provision of the communication, swell timely filled, may reduce any counted plated term adjustment. See 37 CFR 1.704(b). Status 1)			Flemming Saether	3679				
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ② MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Entertained or the many to evaluate under the provided and of 3°CR1. 135(q), is no event, however, many a reply be timely filled Entertained for reply specified above is less than hely (30) days, a reply within the adulatory minimum of thiny (30) days will be considered timely. If the period for reply specified above is less than hely (30) days, a reply within the adulatory minimum of thiny (30) days will be considered timely. If hope provides the set of extended protein for reply will, by adulation, days and will reply set of the control adulation to become ARMODORITO (30 U.S.C. § 113). Responsive to communication (5) filled on 26 June 2002. 2a) This action is FINAL. 2b) This action is non-final. 3 Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-4 and 7-22 is/are pending in the application. 4a) Of the above claim(s) is/are allowed. 6) Claim(s) 1-4 and 7-22 is/are pending in the application. 4a) Claim(s) 1-4 and 7-22 is/are pending in the application. 4b) Claim(s) 1-4 and 7-22 is/are pending in the application. 4p) Claim(s) 1-4 and 7-22 is/are rejected. 7) Claim(s) 1-4 and 7-22 is/are rejected to be claim(s) 1-4 and 7-22 is/are rejected. 7) Claim(s) 1-4 and 7-22 is/are rejected to 20 is/are is/are allowed. 8) Claim(s) 1-4 and 7-22 is/are rejected to 20 is/are is/are allowed. 10 The drawing(s) filed on 1-2 is/are is/are allowed. 11 The proposed drawing correction filed on 1-2 is/are is/a								
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	2) Notic	e of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Informal					

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Claim R jections - 35 USC § 112

Claims 16-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The intended limitations of the first and second dimensions are unclear particularly with regard to movement though a second dimension less than a first dimension since there is no common reference to the dimensions.

Claim Rejections - 35 USC § 102

Claims 1, 3, 4, 8-12 and 15-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Caldwell. Caldwell discloses a fastening peg (10) comprising a conical piercing point (32), a helical flange (36) spiraling radially and circumferentially from the point, a shoulder (40) axially spaced from the flange and, locking assembly (48). The helical flange terminated in a radial edge and as can be seen in Fig. 3, is spaced 360° from where the helical flange begins at the point. Caldwell further teaches a method of piercing and rotating to advance the fastener into the opening and then axially securing the fastener to an opening (28). In regards to claims 1 and 11, the combination of the fastener and the weatherseal and vehicle are merely and intended use of which the device of Caldwell would be capable but, it should be noted that in Caldwell member 12 could broadly be read as a "weatherseal" and opening 18 could broadly be read as an opening in a vehicle.

Claim Rejections - 35 USC § 103

Claims 2, 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caldwell as applied to claims 1, 4, 11 and 12 above, and further in view of Schmidt. Schmidt teaches a threaded fastener wherein the threads begin at a location spaced from the point and to provide a thread to a pointed nose (Fig. 15). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to provide the pointed nose of Caldwell space the beginning of the helical flange from the point and to provide the nose with the a thread as taught in Schmid in order to facilitate the piercing of the substrate as disclosed therein.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caldwell as applied to claim 11 above, and further in view of Mayers. Mayers discloses to provide a locking assembly with locking arms (20). At the time the invention was made, it would have been obvious for one of ordinary skill in the art to locking assembly of Caldwell with locking arms as disclosed in Mayers such that it would be easier to fit the locking assembly into an opening.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caldwell. In regards to the first and second rotational velocities, the fastener of Caldwell would first be rotated at a faster velocity since there would initially be less resistance as the fastener is first inserted into the substrate.

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Response to Arguments

Applicant argues that in Caldwell the dimension between the flange and shoulder is less than that of a carpet layer and as such would compress the carpet layer which is contrary to applicant's invention. In applicant's invention, the fastener is for a weatherseal and should not compress the seal. In response, the examiner agrees however, the claims are directed to a fastener and the combination with the weatherseal is merely an intended use and; a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Flemming Saether whose telephone number is 703-308-0182. The examiner can normally be reached on Monday through Friday.

Flemming Saether Primary Examiner Art Unit 3627

September 20, 2002